

PLAINTIFF'S EXHIBIT 2

Excerpts From The Transcript of
The Deposition of Daniel Gervais,
(August 21, 2014)

In The Case Of

Carrie Couser, On Behalf of Herself and All Others Similarly Situated

v.

Comenity Bank et al.

3:12-CV-02484-MMA-BGS

KAZEROUNI LAW GROUP, APC
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CARRIE COUSER, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

vs.

Case No.

COMENITY BANK,

3:12-CV-02484-MMA-BGS

Defendant.

VOLUME II

Continued Deposition of DANIEL GERVAIS,
taken at 41 South High Street, Columbus,
Ohio, commencing at 10:04 a.m., Thursday,
August 21, 2014, before Rebecca Williams,
RPR, Notary Public.

JOB No. 1885285

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1 DANIEL GERVAIS, of lawful age, called for
2 examination, as provided by the Ohio Rules of
3 Civil Procedure, being by me first duly sworn,
4 as hereinafter certified, deposed and said as
5 follows:

6 EXAMINATION OF DANIEL GERVAIS

7 BY MR. KAZEROUNIAN:

8 Q. Good morning, Mr. Gervais.

9 A. Good morning.

10 Q. Can you state your full name and 10:04:11
11 spell it for the record, please.

12 A. Yes. Daniel Robert Gervais, first
13 name, D-A-N-I-E-L, Robert, R-O-B-E-R-T,
14 G-E-R-V-A-I-S.

15 Q. Okay. Mr. Gervais, we've met 10:04:31
16 before. I took your deposition in this very
17 same room in January of this year; is that
18 correct?

19 A. Correct.

20 Q. Okay. So, at that point, I think, 10:04:40
21 that was your first ever deposition, if I'm not
22 wrong; is that right?

23 A. Yes.

24 Q. So between that time and this time,
25 have you had any other depositions taken of 10:04:49

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1 you?

2 A. No.

3 Q. Okay. So this means that this is
4 your second deposition?

5 A. Yes, sir. 10:04:55

6 Q. Just -- I'm sure Mr. Kaminski, your
7 counsel, has been over the rules again, but
8 since it's only your second depo, I'll just go
9 over the rules so that we have a clear
10 understanding and a clean record. And then if 10:05:05
11 it's okay by your counsel so that we circumvent
12 a lot of the, you know, preliminary questioning
13 like your educational background, and, you
14 know, your work history, we'll just refer back
15 to the other deposition. 10:05:18

16 And then if you want to make any
17 additions to anything you testified to back in
18 January, you may do so, so that we have a clean
19 record, but, otherwise, if there are no
20 changes, I don't know -- there's no reason for 10:05:27
21 us to go over that and hash that out again; is
22 that fair enough?

23 A. Yes.

24 Q. Okay. So one of the main rules --
25 as it probably happened to you in January and 10:05:39

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1 February of last year, you know, in probably a
2 week or two, you're going to get a booklet,
3 like the one Mr. Kaminski has in front of him,
4 where the transcript of today's deposition will
5 be presented to you. It's kind of like in a 10:05:49
6 play format, question/answer, question/answer,
7 and you're going to get an opportunity to make
8 any changes that you see to your testimony.

9 But if you make any material
10 changes, any counsel -- or anybody can make 10:05:59
11 light of that and then challenge your
12 credibility later at trial or other hearings;
13 is that understood?

14 A. Yes.

15 Q. Okay. Now, one of the things that 10:06:12
16 we do as human beings is we anticipate each
17 other's questions and answers and so we cut
18 each other off, but the lady to your left, the
19 court reporter, as good as she is at her job,
20 she can only transcribe one person speaking at 10:06:24
21 any one time.

22 So if you do exactly what you're
23 doing right now and wait for me to completely
24 finish my question, then you'll answer and I'll
25 try and reciprocate that courtesy. Is that 10:06:35

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1 fair enough?

2 A. Yes, sir.

3 Q. Okay. In the same vein, as human
4 beings, we gesture a lot, we shrug our
5 shoulders or go uh-huh or huh-uh, but,
6 obviously, that cannot be articulated in a
7 transcript. So if you can, you know,
8 articulate in yes, no, and full sentences, then
9 we'll have a clean record. Fair enough?

10:06:43

10 A. Yes.

10:06:55

11 Q. One of the most important questions
12 for today -- I'm sorry, rules for today is if
13 you don't understand a question, just let me
14 know and I'll try and rephrase it. That will
15 probably happen frequently, but if you do
16 answer a question, I'm going to presume that
17 you understood the question. Fair enough?

10:07:07

18 A. Yes.

19 Q. Okay. If at any point you want a
20 break, you want to speak to Mr. Kaminski, not a
21 problem, just say so and we'll take a break.
22 Okay?

10:07:13

23 Is there any reason why you can't
24 give me your best testimony today?

25 A. No.

10:07:24

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1 Q. You're not under any medication or
2 anything like that?

3 A. No.

4 Q. Okay. And I think we talked about
5 this last time, do you understand the 10:07:33
6 difference between a guess and an estimate?

7 A. Let's review that.

8 Q. Let's review that. Okay. So,
9 generally speaking, I'm entitled to your best
10 estimate. Usually that entails numbers, like, 10:07:43
11 you know, speed, distances, and things like
12 that. And when you make -- when you make an
13 estimate, it's something that you have personal
14 knowledge of.

15 So, you know, the analogy that all 10:07:54
16 lawyers use in a deposition is if I ask you
17 how long this table is right now, the
18 conference table, you have personal knowledge
19 of it, you've seen this table and through your
20 life experiences, you can, you know, give me a 10:08:07
21 good estimate of how long this table is.

22 If I ask you, on the other hand,
23 how long the coffee table is in my living room,
24 you would be guessing because you've never seen
25 it and you don't even know if I have a coffee 10:08:16

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1 table, right?

2 A. Right.

3 Q. Okay. So you understand the
4 difference?

5 A. Yes. 10:08:21

6 Q. All right. So that all said and
7 done, I'm going to refer back -- let's talk
8 about your -- actually, strike that. I
9 apologize.

10 In preparation for today's 10:08:36
11 deposition, apart from Mr. Kaminski or any of
12 your attorneys, have you spoken with anybody
13 else in preparation for today's deposition?

14 A. No.

15 Q. Okay. Documentation -- is there 10:08:45
16 any documentation that you have reviewed in
17 preparation for today's deposition?

18 A. No.

19 Q. Okay. So going back to your
20 January deposition, has your job -- your 10:08:59
21 employment -- sorry, your employment status --

22 A. I apologize. I apologize. In
23 terms of reviewing documents --

24 Q. Yes.

25 A. -- to correct that, I did review 10:09:09

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1 the copies I had of the deposition, from the
2 prior deposition.

3 Q. Oh, okay. And, actually, that
4 reminds me. I've prepared Exhibit 1, and I'll
5 show Mr. Kaminski. It's a notice of 10:09:22
6 deposition.

7 - - - - -
8 (Thereupon, Deposition Exhibit 1,
9 Notice of Deposition, was marked for
10 purposes of identification.)

11 - - - - -

12 Q. Have you seen that document before?

13 A. Yes.

14 Q. And there are categories in that
15 document that you've been asked to be the -- 10:09:30
16 what we call the 30(b)(6), the person most
17 qualified from your company to respond to
18 questioning on those topics.

19 A. Yes.

20 Q. Are you the best person from 10:09:40
21 Comenity to answer those questions on those
22 topics?

23 A. Yes.

24 Q. Okay. And talking of Comenity --
25 so let's enter that exhibit as 1. 10:09:50

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1 I remember last time in your
2 deposition, you said you actually work for
3 Alliance Data; is that correct?

4 A. Yes.

5 Q. Which is the parent company of 10:09:59
6 Comenity?

7 A. Yes.

8 Q. And is that still your employer?

9 A. Yes.

10 Q. Okay. Now, your job title, is it 10:10:04
11 still the same as when you testified in
12 January?

13 A. Slightly different.

14 Q. Okay.

15 A. It's -- it was strategy analytics 10:10:15
16 manager. It's now senior strategy analytics
17 manager.

18 Q. Congratulations. You got a
19 promotion?

20 A. Yes. 10:10:24

21 Q. So are there any job duties that
22 are different than what you already described
23 in January?

24 A. No.

25 Q. You just have a better title? 10:10:29

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1 A. Yes.

2 Q. I like it. Not that it's any of my
3 business, I hope you're getting compensated
4 better too.

5 So that all said and done, are 10:10:40
6 there anything -- is there anything that's
7 changed, as far as your job duties or your job
8 title, as to what we went over in January?

9 A. No.

10 Q. Okay. Your educational background, 10:10:51
11 has anything changed since January?

12 A. No.

13 Q. You haven't enrolled in a Ph.D.
14 program or anything?

15 A. No, sir. 10:10:58

16 Q. So we're done with that, too.

17 MR. KAZEROUNIAN: So that we are
18 clear, Mr. Kaminski, we can rely on the prior
19 testimony from the January transcript on those
20 background questions? 10:11:07

21 MR. KAMINSKI: Yes.

22 MR. KAZEROUNIAN: Okay.

23 Q. Now, one thing that I just wanted
24 to clarify, before we get into the nitty-gritty
25 of today's deposition, is that you testified in 10:11:20

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1 January that the only time a dialer is used to
2 make calls, for at least the period of time
3 that we're concerned with, which is from August
4 of 2010 until May -- end of May of 2014, for
5 collection purposes and on very few 10:11:38
6 circumstances for, like, you know, emergencies,
7 like fraud or like in breaches of security,
8 correct?

9 A. Correct.

10 Q. There's no other reason -- nothing 10:11:47
11 has changed as to the reason of using a dialer?

12 A. Nothing has changed.

13 Q. Okay. Now, since we met each other
14 last in January, Mr. Kaminski and I have been
15 negotiating, and the class definition has 10:12:01
16 slightly changed. Are you aware of the new
17 class definition?

18 A. Can you -- in terms of dates or in
19 terms of --

20 Q. Well, actually, really what I was 10:12:12
21 getting at is the dates. The period of time in
22 question. Are you aware of that?

23 A. Yes, sir.

24 Q. And what do you believe it is?

25 A. August of 2010 to May 26, 2014. 10:12:21

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1 Q. Excellent. So I guess the primary
2 question, which is probably the first topic on
3 the deposition notice, is: To your
4 understanding, how many people are -- make up
5 the class for the class period? 10:12:46

6 A. Approximately, 4.3 million.

7 Q. 4.3 million. Okay.
8 Now, in your discovery -- written
9 discovery responses, I believe you stated 4.4
10 million. I mean, I know we're approximating, 10:13:02
11 but 100,000 is 100,000. So is it that just
12 like you're remembering off the top of your
13 head and saying 4.3, rather than 4.4, or has
14 anything changed?

15 MR. KAMINSKI: For clarity's sake, 10:13:18
16 I believe that in the interrogatory responses,
17 I believe that it said up to potentially 4.4
18 million.

19 MR. KAZEROUNIAN: You know better
20 than me. I think we should be clear on this. 10:13:31

21 MR. KAMINSKI: And we will.

22 Q. It says, "Responding party believe
23 that the number of unique cell phone numbers
24 called during the period of August 1, 2010
25 through May 26, 2014 is approximately 4.4 10:13:52

1 million."

2 A. That is correct.

3 Q. Okay. So -- I mean, you're

4 entitled to change your mind. You're only

5 100,000 out of 4.4 million. Is that your final 10:14:12

6 answer? Would you like to call a friend? No.

7 I just want to be -- I don't want to be cute.

8 I just really -- for the sake of the regard, we

9 need to have as specific number as possible.

10 So is it 4.4? 10:14:26

11 MR. KAMINSKI: Can we go off the

12 record a moment?

13 MR. KAZEROUNIAN: Yeah, of course.

14 (Discussion held off record.)

15 Q. Okay. So, Mr. Gervais, would it be 10:16:20

16 fair to say that the actual number is between

17 4.3 and 4.4 million?

18 A. Yes --

19 Q. And that's -- I apologize for

20 cutting you off. That's why we have a 10:16:37

21 discrepancy?

22 A. Yes.

23 Q. And how did you come up with --

24 well, actually strike that.

25 The -- one of the main reasons 10:16:46

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1 we're having a deposition today is because in
2 January, you mentioned to me that you have zero
3 data for anything that is prior to September of
4 2012; is that correct?

5 A. Can I have a minute? 10:17:02

6 Q. Of course. Let's go off the
7 record.

8 (Discussion held off record.)

9 Q. So, yeah, when we talked in
10 September -- I'm sorry, in January of this year 10:17:43
11 -- and you mentioned that there's no data prior
12 to September of 2012, but, subsequently, Mr. --
13 you know, your company and my clients have
14 negotiated a settlement that goes prior to
15 September 2012. 10:17:58

16 So I guess my question to you is
17 where are you -- are you -- where are you
18 getting your data from, as it pertains to
19 August of 2010 to September of 2012?

20 A. Our collection activity tables. 10:18:10

21 Q. Okay. So can you expand on that
22 and explain to me how you're getting the data?

23 A. We're querying those tables -- the
24 collection activity table resides in EWD, and
25 we query those to get number of phone calls 10:18:27

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1 made.

2 Q. Okay. So you have your collection
3 software, which is ESW or something -- what's
4 your software called?

5 A. It's proprietary. It's called 10:18:41
6 Collection Web.

7 Q. Okay. So you have Collection Web,
8 and then you can run a search that shows who
9 was then delinquent during that period?

10 A. Yes. 10:18:53

11 Q. Okay. So using that proxy, you can
12 see who was called, correct?

13 A. Yes.

14 Q. So you first have -- you first have
15 to run a search to see who is delinquent; is 10:19:02
16 that right?

17 A. No.

18 Q. Okay. So explain the system to me.

19 A. I run a query for all the calls
20 coded on the collection activity table. 10:19:13

21 Q. And how do you know which calls
22 were in the dialer and which ones were not?

23 A. Not one hundred percent sure which
24 ones were dialer and which ones were not.

25 Q. So how did you come up with a cost 10:19:26

1 number? What system did you use? What
2 process?

3 A. We collect -- we query the
4 Collection Web table to get phone calls made.

5 Q. Okay. 10:19:37

6 A. We then send those -- that list of
7 phone calls made to an outside consultant to
8 get the phone calls made to mobile phones.

9 Q. Okay. So they probably used
10 NEWSTAR or something like that, but the 10:19:52
11 universe that you started with was just anyone
12 that you coded, that they got a call?

13 A. Yes, sir.

14 Q. But were these only with delinquent
15 accounts? 10:20:05

16 A. Yes.

17 Q. Okay. Now -- because where I was
18 going with that line of questioning is how do
19 you know most of those people got called by a
20 dialer but by the mere fact that they were put 10:20:12
21 in a dialer -- and I don't want to put words in
22 your mouth -- going back to your January
23 testimony, you said that anyone that was
24 delinquent would have been put in the dialer as
25 a process? 10:20:22

1 A. Yes.

2 Q. So would it be fair to say that
3 more than fifty percent of those people would
4 have definitely been put in the dialer?

5 A. Yes.

10:20:30

6 Q. More than sixty percent?

7 A. Yes.

8 Q. More than seventy percent?

9 A. Yes.

10 Q. More than eighty percent?

10:20:35

11 A. Yes.

12 Q. More than ninety percent?

13 A. Yes.

14 Q. More than ninety-five percent?

15 A. Yes.

10:20:41

16 Q. Okay. Perfect.

17 And that is based upon the -- the
18 policy and the procedures in place at Comenity
19 and when the dialer is used with delinquent
20 accounts on the telephone numbers, correct?

10:20:55

21 A. Correct.

22 Q. And --

23 MR. KAMINSKI: And let's just
24 clarify that you're talking about the period
25 August 1st '10 through August 31st, 2012.

10:21:02

1 MR. KAZEROUNIAN: Absolutely.

2 That's the period we're talking about.

3 Q. Because subsequent to that, it's
4 easier because you have dialer records, because
5 you testified to that in January, right? 10:21:12

6 A. Yes, sir.

7 Q. So you run a search on your
8 proprietary system -- and I'm just recapping
9 here -- and all delinquent accounts you find --
10 that in that period of time, you find all calls 10:21:25
11 made that are coded, and then you -- and then
12 because we know that they're delinquent and
13 because there's over ninety-five percent
14 possibility that those numbers were put into a
15 dialer, you can presume that they would fit 10:21:41
16 within the class category -- the class
17 definition. And so the only thing left to do
18 would be to segregate the cell phone numbers
19 from the landline numbers, correct?

20 A. Correct. 10:21:53

21 Q. And then the next step is you send
22 it to your third-party vendor who scrubbed
23 these and segregated only the cell phone
24 numbers, correct?

25 A. Correct. 10:22:01

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1 Q. Okay. Now, there's only one more
2 piece to that puzzle that I need to come full
3 loop on, which is how do you know who was in
4 the Picchi class, which is the -- the wrong
5 call account and who was not? 10:22:13

6 A. During that process you just
7 described, we excluded any call that was
8 terminated as a wrong number.

9 Q. Right. Now, I remember in January,
10 you said that the Picchi class, which is the 10:22:27
11 Florida class action on the wrong party calls,
12 were premised on coded -- on wrong party calls,
13 correct?

14 A. Correct.

15 Q. Is that coding in your software? 10:22:42
16 Is it proprietary software, or is it only on
17 the dialer?

18 A. It's in both.

19 Q. Okay. So, therefore, you did have
20 data for the coding -- going back before 10:22:49
21 September 2012 on the wrong party coding?

22 A. Yes.

23 Q. Okay. So you scrubbed that
24 in-house?

25 A. Yes. 10:22:59

1 Q. And your software is capable of
2 doing that?

3 A. Yes, sir.

4 Q. Okay. And that scrubbing process
5 is probably over ninety-nine percent accurate? 10:23:08

6 A. Yes.

7 Q. Okay.

8 MR. KAMINSKI: Late objection.
9 Calls for speculation, but I'll let the witness
10 testify and let his answer stand. 10:23:17

11 Q. So in compiling the data for the
12 August 1st, 2010 to August 31st, 2012, are you
13 confident that we have all the calls that were
14 made to cell phones that would fit within this
15 class definition? Is there anything else that 10:23:38
16 we could have possibly missed?

17 A. Yes, I'm confident.

18 Q. Okay. So in coming up with the
19 total universe of numbers for the class
20 definition from August of 2010 to end of May 10:23:51
21 2014, you actually have to add up two separate
22 sets of numbers, correct, because you have to
23 do two type of searches, am I right?

24 A. Correct.

25 Q. Okay. We went over the way that 10:24:03

1 you came up with the numbers for -- 2012 to
2 2014 in January, and we'll go over that just so
3 we come full loop, but do you know
4 approximately how many people are in the August
5 2010 until August 31st, 2012 group? 10:24:20

6 A. Yes, approximately 2.3 million.

7 Q. Perfect. Okay. So let's go to the
8 September 2012 to May of 2014. How did you
9 come up with the number of people in the class
10 in that period? 10:24:42

11 MR. KAMINSKI: And just for
12 clarity's sake, we're talking about September
13 1st, 2012 through May 26, 2014, correct?

14 MR. KAZEROUNIAN: Yes, sir.

15 A. I queried the dialer tables. 10:24:53

16 Q. You queried the dialer tables?

17 A. Yes.

18 Q. And is there some kind of dialer
19 list?

20 A. Yes. 10:25:02

21 Q. And how did you query it?

22 A. Using a tool called WinSQL.

23 Q. Okay. And what did you do in
24 running a query?

25 A. I queried for all calls made via 10:25:16

1 dialing equipment between September of 2012 and
2 May 26th, 2014.

3 Q. So you started with the entire
4 universe?

5 A. Yes, sir. 10:25:28

6 Q. Okay. So then what did you do?

7 A. I excluded the wrong number of
8 calls.

9 Q. Because they were coded?

10 A. Yes, sir. 10:25:34

11 Q. And the coding for the wrong party
12 calls on the dialer had been put into effect
13 from when you started compiling the tables,
14 correct?

15 A. Yes. 10:25:43

16 Q. Which was in September of 2012?

17 A. Yes, sir.

18 Q. Okay. Continue.

19 A. Once we had that list, we sent it
20 to outside experts, NEWSTAR. 10:25:51

21 Q. Right.

22 A. They scrubbed it for the phone
23 numbers that were mobile phones.

24 Q. Okay. And the scrubbing that you
25 did for the wrong party calls, you did that 10:26:05

1 in-house again, correct?

2 A. Yes.

3 Q. Did you do that yourself?

4 A. Yes.

5 Q. And are you confident that that 10:26:10

6 process was over ninety-nine percent accurate?

7 A. Yes, sir.

8 Q. Okay. So after NEWSTAR sends it
9 back, they send all the cell phone numbers,
10 right? 10:26:21

11 A. Yes, sir.

12 Q. So in that period of time, the
13 September of 2012 through May 26 of 2014, how
14 many people in that -- in that group?

15 A. A little more than 2 million. 10:26:31

16 Q. Okay. So then you add that group
17 with the group that we previously talked about,
18 which is August 2010 to August 31, 2012, which
19 was 2.3, and then just over two, which gives us
20 the entire class, which is 4.3 -- just over 4.3 10:26:49
21 as you had mentioned previously, right?

22 A. Yes, sir.

23 Q. And that is our world?

24 A. Yes.

25 Q. Our class? 10:27:01

1 A. Yes.

2 Q. Excellent. And are you confident
3 that those two groups put together that make up
4 our class are really the class and we haven't
5 left out any numbers outside of that? Any 10:27:14
6 class members outside of that to a high degree
7 of confidence?

8 MR. KAMINSKI: Excluding the wrong
9 number of calls from the Picchi class?

10 MR. KAZEROUNIAN: Yes. I'm talking 10:27:25
11 about are we confident that we've got anyone
12 that fits within our class definition, which
13 excludes Picchi, which excludes landline calls,
14 you know, and any -- I just want to make sure
15 that we haven't left out any people that would 10:27:37
16 fit into our class on the periphery.

17 A. Yes, I am confident.

18 Q. Excellent.

19 Now, these people that make up our
20 class, the 4.3 -- give or take -- million, 10:27:54
21 these include accountholders, and, you know,
22 references and people like that, right?

23 A. Yes, sir.

24 Q. Okay. And where we got -- where we
25 got the data from, which is the -- you know, 10:28:17

1 for the one category of people was from the
2 collection software and the other one was from
3 the dialer, that's a closed universe, there's
4 nothing outside of that universe that we should
5 have been extrapolating data from, right? 10:28:30

6 A. Correct.

7 MR. KAMINSKI: And, Mr. Gervais,
8 just remember that if at any time you don't
9 understand a question, you can ask him to
10 rephrase it or just tell him that you don't 10:28:47
11 understand.

12 Q. Now, did you go through any
13 processes to make sure that any of the people
14 in our class had not given their telephone
15 number or had given some kind of consent, 10:29:04
16 rather than not consent?

17 MR. KAMINSKI: Objection; vague and
18 ambiguous.

19 Do you understand what he said?

20 A. I don't understand the question. 10:29:12

21 Q. Right. Sure.

22 So, for example --

23 MR. KAZEROUNIAN: Actually, can we
24 go off the record for a second.

25 (Discussion held off the record.) 10:44:12

1 Q. I think what we were trying to
2 establish before the break, Mr. Gervais, is how
3 do we know that the class consists of people
4 that genuinely did not give consent to be
5 called and that's why they're in the class? 10:44:26
6 Did you go through some kind of procedure to
7 extract people that had given their telephone
8 numbers to the bank and were permitted to be
9 called with the dialer?

10 A. Yes, we did. 10:44:36

11 Q. And can you explain that procedure
12 to me, please?

13 A. We looked at the phone number
14 called and we compared it to the application
15 that was provided, and if the phone number was 10:44:44
16 on the application, the customer had given us
17 consent.

18 Q. And, therefore, you excluded it?

19 A. Yes, sir.

20 Q. And, therefore, the 4.3 million 10:44:55
21 people, give or take, does not include people
22 who had given their telephone numbers on the
23 application, correct?

24 A. Yes, sir.

25 Q. Excellent. 10:45:04

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1 Now, were you able to conduct this
2 procedure for the August 2010 to August 2012
3 period?

4 A. Yes.

5 Q. Because you still had the 10:45:11
6 applications, correct?

7 A. Yes, sir.

8 Q. Okay. Now, how do you know that
9 some of these people that had given their
10 telephone numbers on the application that 10:45:23
11 you've excluded had not actually sent a cease
12 and desist request and got volitive calls
13 subsequent to that with a dialer?

14 A. Those customers would not be in the
15 dialer. 10:45:39

16 Q. Why is that?

17 A. The process which builds the dialer
18 list --

19 Q. Right.

20 A. -- excluded those accounts. 10:45:46

21 Q. Is it because the people that make
22 a cease and desist request get coded some way?

23 A. Yes, sir.

24 Q. And so once they get coded, it's
25 like the way that your software works, it makes 10:45:59

1 it impossible for the dialer to pick up anyone
2 to put into the dialer with the telephone
3 number that's been coded "Do not call"?

4 A. Correct.

5 Q. And with what degree of certainty 10:46:10
6 does that work?

7 MR. KAMINSKI: Objection; calls for
8 speculation; vague and ambiguous.

9 Q. I mean, is it more than ninety-five
10 percent accurate? 10:46:20

11 A. Yes, sir.

12 Q. More than ninety-nine percent?

13 A. Yes, sir.

14 Q. Okay. Now, we discussed
15 arbitration in the last deposition in January. 10:46:33
16 A lot of the accountholders have arbitration
17 agreements, correct?

18 A. Yes, sir.

19 Q. Now, this 4.3 million people --
20 now, if -- I talked to your counsel previously. 10:46:53

21 I think there is actually a specific number --
22 precise number of people, I think, 4,322,812.

23 I'm not expecting you to confirm or deny that,
24 because, obviously, off the top of your head,
25 you probably don't, but there is a specific 10:47:10

1 number that creates a total -- specific total

2 -- some certain total of the class, correct?

3 A. Correct.

4 Q. Now, if and when the court approves
5 the preliminary approval of this class action, 10:47:23
6 your company can give an electronic searchable
7 format to the claims administrator, a list of
8 these people with their addresses, correct?

9 A. Correct.

10 Q. And has that list already been 10:47:38
11 compiled?

12 A. Yes.

13 MR. KAZEROUNIAN: I'm sorry, can we
14 go off the record.

15 (Discussion held off the record.) 10:49:18

16 Q. Mr. Gervais, I think we're coming
17 to the end of the deposition, and the reason
18 that that is because I had some testimony from
19 you from January. With the -- obviously, there
20 are certain things that were clarified today, 10:49:33
21 specifically, you know, how we get the data
22 from August of 2010 to August of 2012.

23 With that exception, would it be
24 fair to say that what you testified to in
25 January stands and can be used in conjunction 10:49:45

1 with today's testimony?

2 A. Yes, sir.

3 Q. Okay. I don't have any further
4 questions.

5 MR. KAZEROUNIAN: Mr. Kaminski? 10:49:52

6 MR. KAMINSKI: I don't have any
7 further questions.

8 MR. KAZEROUNIAN: Okay. So can we
9 stipulate that within five days, you'll produce
10 the original transcript to Mr. Kaminski's 10:50:04
11 office, and I'll have an electronic format one
12 -- I'll just have a certified copy.

13 But the original goes to Mr.
14 Kaminski's office, and then within seven days
15 thereafter -- it's going to be a very short 10:50:15
16 deposition transcript -- hopefully, sooner than
17 seven days, you can read it, make any changes
18 if you deem fit, and then advise Mr. Kaminski
19 of those changes, who will, in turn, advise me
20 of those changes, if any. 10:50:29

21 If within that seven days, after
22 Mr. Kaminski's receipt of that transcript, I'm
23 not informed of any changes, it will be
24 presumed that none were made.

25 Mr. Kaminski will keep custody and 10:50:37

1 control of the original transcript and make it
2 available for future hearings and for trial,
3 should it get there, upon reasonable -- and
4 make it available to all other counsel upon
5 reasonable notice.

10:50:48

6 If the original is lost or
7 misplaced, a certified copy can be used in its
8 place for future hearings and trial.

9 MR. KAMINSKI: So stipulated.

10 MR. KAZEROUNIAN: Mr. Gervais,
11 thank you very much for your time.

10:51:02

12 THE WITNESS: Thank you.

13 (Thereupon, the deposition was
14 concluded at 10:51 a.m.)

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